

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P.No.29220 of 2018
and
W.M.P.No.34144 of 2018

Dr.C.R.Gladys Leema Rose,
494, Thiuvalur Street,
Tirupur Road, Kangeyam,
Tirupur District.

...Petitioner

Vs.

1.The Vice Chancellor Committee,
Bharathiar University,
Coimbatore 641 046.

2.The Registrar,
Bharathiar University,
Coimbatore 641 046.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the Charge Memo vide Ref.No:BU/COE/2018 dated 12.04.2018 issued by the 2nd respondent against the Petitioner and quash the same and subsequently direct the respondents to regularise the petitioner's suspension period from 30.08.2015 to 11.10.2015 with all attendant benefits accrued at all, less the subsistence allowances paid to the Petitioner while on the suspension period.

For Petitioner :Mr.A.Suresh Sakthi Murugan

For Respondents :Mr.L.P.Shanmugasundaram
Standing counsel

O R D E R

The charge memo dated 12.04.2018 is sought to be quashed in the present Writ Petition.

2.The writ petitioner was appointed as Controller of Examination for a tenure of three years in the respondent University in vide proceedings dated 13.04.2015. On account of

certain serious allegations against the Writ Petitioner, the following charges are framed, which all are enumerated in Annexure I of the impugned charge memo dated 12.04.2018:

"Charge - I

Dr.C.R.Gladys Leema Rose while working as Controller of Examination, Bharathiar University, Coimbatore, being the competent authority to dispose old answer scripts, with the knowledge of Vice-Chancellor, have colluded with Thiru.Murugan, the proprietor of Murugan Waste Paper and sold 1,56,215 Kgs of answer scripts at a lesser price of Rs.15/-per kg to M/s. Murugan Waste Paper, without inviting a competitive tender and in violation of syndicate resolution No.42 dated 08.03.2010. It was noticed that there was under weighment of cardboard boxes and old answer scripts bundle.

Charge - II

In the previous year, old answer scripts of the University were disposed of at Rs.21.50 per kg after inviting competitive tender. During the year 2015, 1,56,215 kgs of old answer scripts were sold at Rs.15/- per kg instead of Rs.21.50 per kg to M/s Murugan Waste Paper, R.K.G. Nagar, Kalveerampalayam, Coimbatore without inviting competitive tender thereby causing Rs.10,15,397 loss to the University."

Annexure II to the charge memo provides statement of allegations, namely imputations of misconduct or misbehaviour in support of the charges framed against the writ petitioner. Annexure III provides the list of documents relied upon by the charges for establishing the charges. Thus there is no infirmity, as such, in respect of charges framed against the writ petitioner.

3.The learned counsel for the writ petitioner states that the petitioner had already submitted an explanation stating that he is not responsible for any of the allegations set out in the charge memo. The learned counsel for the writ petitioner made a sincere attempt to convince this Court by stating that on merits the writ petitioner is not liable for any such prosecution by way of departmental proceedings and he is innocent of the allegations.

4.Complex facts and circumstances, so also the disputed facts can never be adjudicated in a Writ Petition proceedings under Article 226 of the Constitution of India. No charge memo can be quashed by considering the merits and demerits of the allegations set out in the impugned charge memo, the allegations

remained only as an allegation and it is to be established, disputed and a finding is to be provided by the competent authorities. For establishing the case, both by the department as well as by the delinquent official, both have to file their respective documents and adduce evidences, if required. Contrarily the High Court cannot adjudicate the documents, merits and the factual details placed in a writ proceedings and quash the charge memo itself. Such a procedure can never be done in a writ proceedings by the High Court. All such merits are to be adjudicated properly by affording an opportunity to the parties concerned and thereafter, the decision is to be taken by the competent officials.

5. Thus it is left open to the writ petitioner to participate in the process of enquiry and establish his innocence or otherwise by availing the opportunities.

6. Therefore, this Court is of the opinion that there is no infirmity in the charge memo framed against the writ petitioner. A charge memo can be challenged on a limited ground and a judicial review against the charge memo is certainly limited. A charge memo can be challenged on limited grounds and the Court can entertain a writ petition on exceptional circumstances. A charge memo can be challenged, if the same was issued by an incompetent authority having no jurisdiction, an allegation of mala fides is raised if the same is in violation of statutory rules. Even in case of raising the allegation of mala fides, the authority against whom such an allegation is raised, has to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any such legal grounds, no charge memo can be entertained by way of writ petition.

7. Intermittent intervention in the disciplinary proceedings is not preferable. However, only on exceptional circumstances, this Court can issue a direction against the proceedings and not in a routine manner. Mere issuance of a call letter to the writ petitioner directing him to participate in the domestic enquiry will not give any cause of action to move this writ petition under Article 226 of the Constitution of India. Thus, the writ petition is absolutely misconceived and the grounds raised in this writ petition cannot be considered.

8. The Honourable Supreme Court of India in the case of Union of India and others Vs. Upendra Singh, reported in (1994) 3 SCC 357 held as follows:

"6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out

or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in *H.B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Kamal v. Gopi Nath & Sons*. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8)

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

9. In the case of *Secretary, Ministry of Defence and Others Vs. Prabhash Chandra Mirdha*, reported in (2012) 11 SCC 565, the Apex Court of India held that normally, a Charge memo is not liable to be quashed as it does not adversely affect the rights of an employee and does not give rise to any cause of action. A writ lies only when some right of a party is infringed. The charge memo does not infringe the right of a party. It is only when a final order imposing punishment or otherwise, it may have a cause of action. Hence, writ petition challenging charge memo by itself is not maintainable. However, it can be quashed on the ground that issuing authority being not competent to issue the same.

10.In the case of Union of India and another vs. Kunishetty Satyanarayana [(2006) 12 SCC 58], it was held that writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not be ordinarily exercised by quashing a charge memo. No doubt, in some very rare and exceptional cases, the High Court can quash a charge memo if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal.

11.In view of the settled principles as enumerated in the judgments cited supra, this Court has no hesitation in coming to the conclusion that the writ petitioner is bound to participate in the process of enquiry and proved his innocence or otherwise by availing the opportunity. Thus the petitioner has not established any grounds that there is no infirmity, as such, in respect of charges framed against the writ petitioner.

12.With the above observation, this Writ Petition is dismissed. The writ petitioner is at liberty to submit any further explanation or objection with reference to the allegations set out in the charge memo. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

av/sai

To

1.The Vice Chancellor Committee,
Bharathiar University,
Coimbatore 641 046.

2.The Registrar,
Bharathiar University,
Coimbatore 641 046.

+lcc to Mr.A.Suresh Sakthi Murugan, Advocate, S.R.No.18412
+lcc to Mr.L.P.Shanmuga Sundaram, Advocate, S.R.No.18502

W.P.No.29220 of 2018

SSI (CO)

RRS (08/04/2019)